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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. RICHARD TALLEY, Defendant and Appellant.	H036649 (Monterey County Super. Ct. No. SS102334A)

A jury convicted defendant Richard Talley of felony driving under the influence (DUI) (Veh. Code, §§ 23152, subd. (a)), disturbing the peace by loud noise (Pen. Code, § 415, subd. (2)),[1] misdemeanor vandalism (§ 594, subd. (b)(2)(A)), and misdemeanor resisting a peace officer (§ 148, subd. (a)(1)). He was sentenced to 16 months in any penal institution.

On appeal, defendant contends the trial court prejudicially erred, in violation of his right to due process, (1) by failing to instruct the jury sua sponte that section 415, subdivision (2) describes a specific intent crime and (2) by excluding "crucial" impeachment evidence supporting the defense theory of the case. We affirm.

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[1] Further statutory references are to the Penal Code unless otherwise noted.

I. Background

In October 2010, James Roddy and his young son were sharing a four-bedroom house with Shawna Fink and her two young children. Roddy and his son had moved in three months earlier "solely for a place to live." Roddy and Fink were not and had never been romantically involved.

Defendant was friends with Fink and Roddy and visited them at their house in Prunedale "probably once a week or so." He had recently broken up with his long-term girlfriend; she was a friend of Fink's, and Fink had been "kind enough to allow him to stay there a night or two." It had been "approximately two weeks since he had stayed there for one night." He was not living there, nor was he dating Fink.

On October 11, 2010, Fink, Roddy, defendant, and another friend, Kevin, were at the Prunedale house. Defendant and Kevin were "good friends." "Kevin had a relationship with [Fink]," and when Roddy moved in with Fink, Kevin "became jealous."

Kevin left early in the evening. Around 8:30 or 9:00 that night, defendant and Fink were drinking Coors Light and Wild Turkey on the patio. Roddy, who was not drinking, was "in and out" of the conversation, which turned unpleasant when defendant accused him of "being involved with" Fink and "causing waves." The subject was "a repeated issue" with defendant, but he and Roddy had never had a brawl about it, and Roddy had never felt physically threatened by defendant. This time was "different." Voices were raised. Defendant said Roddy was "causing trouble" and warned that he had "better watch out." Between 9:00 p.m. and "3:00 or so" the next morning, Roddy, a former Marine, "avoided probably six altercations" with defendant by removing himself from the back yard or trying to put obstacles like the patio table between himself and defendant. He finally asked defendant to leave. Fink called someone "to come and get him," and Roddy "paid [that person] $20 to do so," since it was "about 2:30" in the morning. Defendant left, with "[a] little bit of verbal confrontation" as he walked away.

Twenty to 30 minutes later, Roddy was in his bedroom at the front of the house when he saw headlights coming up the steep driveway. All the other lights in the house were off. Roddy recognized defendant's Cadillac. Defendant got out of the car and "made his way around" the house, "banging" on "[a]ll the windows" and demanding, "'Open the fucking door. Let me in.'" He sounded "more agitated" than he had earlier. Roddy called 911.

Meanwhile, defendant returned to his car, revved his engine "a number of times," drove back down the driveway, and did "donuts" at the base of the driveway. Doing donuts is "[a] little more aggressive" than driving in circles; it involves "the gas, and possibly hitting the brakes to get your car to spin in circles." Roddy, who was still on the phone with 911, heard the car "making noises" and the tires "squealing." Defendant did "two complete circles," and "as each turn passed, [Roddy] could see the car half of the time." Defendant then drove "out of earshot," but he came back less than five minutes later and drove up the driveway again. Getting out of his car, he "proceeded to bang on all the windows, telling [Fink's] son to open the door." "He kept saying, 'Let me in.' [¶] And at that point, he punched through the window [in the front door] and was reaching there to unlock the door."

Roddy was "concerned" for his and Fink's safety "and for the children's safety." Defendant "had made several comments that [Roddy's] tires would get slashed, or [his] new truck would be ruined, or . . . all [his] money would be taken from [him], or comments [of] that nature."

Fink kept a "fairly light" aluminum baseball bat inside the front door. As defendant reached through the broken pane to open the door, Roddy pushed the end of the bat through another pane and struck defendant in the face.[2] Defendant "took a couple

[2] The parties stipulated that "the injuries sustained by the defendant as a result of the strike with a bat, the defendant suffered a fracture of the bridge of the nasal bones and

of steps back, and then disappeared around the corner." Roddy, who had been on the phone with 911 "the whole time," was still talking to the dispatcher when the police arrived about 10 minutes later.

Monterey County Sheriff's Deputy Scott Davis arrived first, saw defendant walking up the driveway, and ordered him to come toward him. Defendant continued walking away, and Davis again ordered him to stop, drawing his handgun when defendant again ignored him. Defendant then complied with Davis's request. Davis saw that defendant had a laceration on the bridge of his nose and blood dripping down his face. From five feet away, Davis noticed "an overwhelming odor of alcohol on [defendant's] breath and person." Defendant's eyes were red. His voice was "raised" and "[e]xcited." He "looked like he was injured," but Davis "wouldn't necessarily describe it as being upset." "I don't know if I would say he was upset or angry. Maybe -- I don't know what you would call it."

After searching defendant for weapons, Davis asked him what was going on. Defendant said he did not know why he had done donuts in the roadway. He initially said he had consumed "several" beers and "some" liquor, but he later told Davis he had been drinking "all day." A friend had dropped him off "somewhere" earlier that evening, and he had gotten into his own car and driven back to the Prunedale house. He said he broke the window by accident.

Davis had been trained to administer the horizontal gaze nystagmus (HGN) test, and he did so while he and defendant sat on the front push bars of a police cruiser waiting for an ambulance.[3] Davis told defendant to follow Davis's finger "with his eyes only, and not to move his head." Davis was "looking for what's called bouncing [n]ystagmus,

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significant depression of the fragments. There was also a nasal laceration that required seven stitches to close."

[3] At trial, the court found Davis qualified as an expert in using the HGN test as a field sobriety test tool.

bouncing of the eye," which increases with alcohol ingestion. Alcohol ingestion shortens the distance the tester's finger needs to move before the eyes start to bounce. "[A]s soon as you move the finger from the front of their face by their nose out, [the] sooner their eye starts to twitch and to bounce, the higher their level of intoxication will be." Defendant's eyes displayed nystagmus.

By then, fire ambulance personnel, the California Highway Patrol, and other Monterey County Sheriff's deputies, including Deputy Jose Sheppy, had arrived at the scene. After the ambulance left to take defendant to the hospital, Davis examined the Cadillac in the driveway. The headlights were on, the driver's door was open, and the keys were still in the ignition. The dome light was also on, and the driver's seat appeared to have been adjusted for a person of defendant's height. There was blood on the leather interior. The hood of the car was "still warm like it had just been driven."

Davis went to the hospital to get a statement from defendant. As he pulled into the parking area, he heard over the scanner that Salinas police were being dispatched to reports of a disturbance at the hospital, but he did not know at the time that defendant was causing the disturbance. As Davis walked toward the emergency room, he saw defendant walking up and down the hallway and going into other patients' rooms. As Davis approached the door, defendant came outside "and started cursing at the [ambulance] staff that had just transported him to the hospital." Defendant was picking cigarette butts out of an ashtray and demanding that the ambulance drivers allow him his one phone call, although he was not handcuffed or under arrest at the time. Davis followed defendant back inside. Defendant was "all over the place," cursing loudly and "[j]ust acting out of control." Davis told him he needed "to calm down" to get treatment. Defendant, who still "[v]ery obvious[ly]" smelled of alcohol, "became belligerent," said " 'fuck you,' " and started to walk past Davis back into the hallway. His behavior at the hospital was "significantly worse" than it had been at the Prunedale house, and Davis believed he was

intoxicated "to the point where he was well above . . . what would be determined to be unsafe to drive . . . ."

Davis handcuffed and arrested defendant and with some difficulty placed him in his patrol car. He told defendant he was under arrest for DUI and would have to submit to a blood test, since he was bleeding from the face and could not perform a breath test. Defendant refused the test, and when Davis informed him that the refusal would result in suspension of his driver's license, defendant said "he didn't care, he doesn't drive that much anyways."

Davis drove defendant to the jail, but the jail nurse sent them back to the hospital, where defendant was treated for his injuries. He again refused to submit to a blood test.

Roddy, Davis, and Sheppy testified for the prosecution at trial. Sheppy had photographed defendant's injuries, and during their brief contact, he had smelled alcohol on defendant's breath. Sheppy testified that Roddy and Fink also smelled of alcohol.

The defense rested without presenting any evidence. In his closing argument, defendant's trial counsel told the jury that while he would "probably concede" that the case was "a disturbing the peace situation," it was "not a case about driving under the influence of alcohol." Instead, it was a "driving under the influence of anger" case. There was "a whole issue about Fink and Roddy," and it "obviously touched a lot of nerves for everyone involved." Defendant's driving was "easily explained by the fact that he just had this big argument blowout with a long-time friend, and there's this whole allegation about a love triangle . . . [and] all of that colored the driving." Roddy had "every reason to concoct" a story and to exaggerate the facts to "protect" himself, defendant's trial counsel claimed, and Davis, who had recently been recognized by Mothers Against Drunk Driving, was "emotionally invested" in the case. "[I]t all goes down to credibility," defendant's trial counsel told the jury.

The jury found defendant guilty of felony DUI, disturbing the peace by loud noise, misdemeanor vandalism, and misdemeanor resisting a peace officer.[4] He was sentenced to 16 months in any penal institution. He filed a timely notice of appeal.

II. Discussion

A. Alleged Instructional Error

Defendant contends the trial court prejudicially erred, in violation of his right to due process, by failing to instruct the jury sua sponte that disturbing the peace by loud noise is a specific intent crime. We disagree.

We are called upon to determine whether section 415, subdivision (2) describes a specific intent crime. The interpretation of a statute presents a question of law that we review de novo. (*People v. Duz-Mor Laboratory, Inc.* (1998) 68 Cal.App.4th 654, 660.) In determining whether a crime requires specific intent, we "begin with an examination of the statutory language describing the proscribed conduct, including any express or implied reference to a mental state." (*People v. Hering* (1999) 20 Cal.4th 440, 445.) "'A crime is characterized as a "general intent" crime when the required mental state entails only an intent to do the act that causes the harm; a crime is characterized as a "specific intent" crime when the required mental state entails an intent to cause the resulting harm.'" (*People v. Atkins* (2001) 25 Cal.4th 76, 86 (*Atkins*); *People v. Hood* (1969) 1 Cal.3d 444, 456-457 (*Hood*) ["When the definition of a crime consists of only the description of a particular act, without reference to intent to do a further act or achieve a future consequence, we ask whether the defendant intended to do the proscribed act. This intention is deemed to be a general criminal intent. When the definition refers to

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[4] Defendant had admitted his three DUI priors before trial (Veh. Code, § 23550). The information also specially alleged his refusal to submit to a chemical test (Veh. Code, §§ 23577, 23612). The jury deadlocked on that allegation, and it was later dismissed on the district attorney's motion.

defendant's intent to do some further act or achieve some additional consequence, the crime is deemed to be one of specific intent."].)

The statutory language at issue here refers to "[a]ny person who maliciously and willfully disturbs another person by loud and unreasonable noise." (§ 415, subd. (2).) "[M]aliciously" and "willfully" describe the required mental state. Section 7 defines both words, and those definitions apply because the meanings of "maliciously" and "willfully" are not "otherwise apparent from the context" of section 415. (§ 7, subds. (1), (4).)

The section 7 definition of "willfully" has not changed since the statute was enacted in 1872. (Historical and Statutory Notes, 47 West's Ann. Pen. Code (1999 ed.) § 7, p. 20.) "The word 'willfully,' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage." (§ 7, subd. (1).) "The use of the word 'willfully' in a penal statute usually defines a general criminal intent, absent other statutory language that requires 'an intent to do a further act or achieve a future consequence.' [Citations.]" (*Atkins*, *supra*, 25 Cal.4th at p. 85; see, e.g., *People v. Stark* (1994) 26 Cal.App.4th 1179, 1182-1183 (*Stark*) [where the only act described in section 484b was the "willful" diversion of construction funds, the statute defined a general intent crime].) There are some statutes that describe specific intent crimes in terms of "willful" behavior, but the specific intent those statutes require arises not from the word "willful" but instead from an intent to do a further act or achieve a future consequence. (*Stark*, at pp. 1182-1183; see, e.g., *People v. Dollar* (1991) 228 Cal.App.3d 1335, 1340-1342 & fn. 3 [statute proscribing "willfully and maliciously" threatening a witness with the further "'intent and the apparent ability to carry out the threat so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family'" defined a specific intent crime].)

The definition of "maliciously" has remained unchanged since 1874. (See Acts Amendatory of the Codes of Cal. (1873-74) Amends. to Pen. Code, ch. 614, § 1.) "The

words ‘malice’ and ‘maliciously’ import a wish to vex, annoy, or injure another person, *or an intent to do a wrongful act*, established either by proof or presumption of law.” (§ 7, subd. (4), italics added.) Numerous cases have held in a variety of contexts that the word “maliciously” in a penal statute does not, without more, make the crime the statute defines a specific intent crime. (E.g., *Atkins*, *supra*, 25 Cal.4th at pp. 86-87 [“willfully and maliciously set[ing] fire to or burn[ing] . . . any structure, forest land, or building” is a general intent crime]; *People v. Laster* (1997) 52 Cal.App.4th 1450, 1468 [discharging a firearm from a motor vehicle is “manifestly a general intent crime” since it “is committed by doing the proscribed act; there is no statutory requirement that the defendant intend to bring about any particular result”]; *People v. Bohmer* (1975) 46 Cal.App.3d 185, 190 [intent required for a violation of section 587 is the intent to obstruct the rails or track of the railroad; “[a]n intent to cause derailment of a train or to cause injury to any passenger or member of a train crew is not implied in the word ‘maliciously’ as used in section 587.”].)

Section 415, subdivision (2) proscribes a particular act—“disturb[ing] another person by loud and unreasonable noise.” Nothing in the statutory language suggests that the requirement that the defendant do so “maliciously and willfully” means that he or she must also intend to do a further act or achieve a future consequence. On its face, then, section 415, subdivision (2) appears to describe a general intent crime. (*Atkins*, *supra*, 25 Cal.4th at p. 86; *Hood*, *supra*, 1 Cal.3d at pp. 456-457.)

Defendant argues, however, that “[t]he element of disturbing the peace that the noise ‘be used for the purpose of disrupting unlawful [*sic*] activities, rather than as a means to communicate’ meets th[e] definition of specific intent, as it includes an intent to achieve an additional consequence—disrupting lawful activities.” We agree that the offense defendant was charged with required specific intent.

The statute says nothing about “disrupting lawful activities.” That phrase can be traced to *In re Brown* (1973) 9 Cal.3d 612 (*Brown*), where the California Supreme Court

held that an earlier version of section 415 could not, consistent with First Amendment rights, "be applied to prohibit all loud speech which disturbs others even if it was intended to do so." (*Brown*, at p. 621.)

In *Brown*, college students who created a "'thunderous'" din at a rally in support of a student strike were convicted under former section 415, which prohibited "'maliciously and willfully disturb[ing] the peace or quiet of any neighborhood or person, by loud or unusual noise, or by tumultuous or offensive conduct . . . .'" (*Brown*, *supra*, 9 Cal.3d at pp. 615-616.) The California Supreme Court granted relief. (*Id.* at p. 621.) "There is a fundamental difference," the court explained, "between loud communications and the use of loud shouting and cheering, not to inform or persuade, *but to disrupt lawful endeavors*." (*Id*. at p. 621, italics added.) The court held that "loud shouting and cheering constitutes the loud 'noise' prohibited by [former] section 415 only in two situations: 1) where there is a clear and present danger of imminent violence and 2) where the purported communication is *used as a guise* to disrupt lawful endeavors." (*Brown*, at p. 621, italics added.)[5]

Whether a loud noise created a clear and present danger of imminent violence can be objectively determined; the answer does not turn on whether the noisemaker intended to provoke a violent reaction. (See *In re Cesar V.* (2011) 192 Cal.App.4th 989, 998-999 [holding that section 415, subdivision (1) requires only general intent].) The same cannot be said about whether a purported communication was *used as a guise* to disrupt lawful endeavors. The *Brown* court recognized this distinction, explaining that the word "noise"

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[5] *Brown* was decided in 1973. In 1974, the Legislature repealed former section 415 and enacted the current statute. The constitutional limitations that the *Brown* court placed on the word "noise" apply to the current statute because the Legislature is presumed to be aware of the meanings ascribed to particular words or phrases construed in earlier judicial decisions (*Irvine Co. v. California Employment Com.* (1946) 27 Cal.2d 570, 581) and to have used them in a subsequent statute in the same sense. (*City of Long Beach v. Marshall* (1938) 11 Cal.2d 609, 620.)

in former section 415 encompasses communications made in a loud manner "only when there is a clear and present danger of violence *or when the communication is not intended as such* but is merely a guise to disturb persons." (*Brown*, *supra*, 9 Cal.3d at p. 619, italics added.) The latter circumstance, where the purported communication was used as a guise to disturb persons, requires specific intent. In this situation, the crime is a specific intent crime because its definition, as construed in *Brown*, requires not only the intent to do the proscribed act but also the intent to achieve a future consequence—disrupting lawful activities. (*Hood*, *supra*, 1 Cal.3d at pp. 456-457.)

Defendant claims the trial court's failure to instruct the jury on the concurrence of act and specific intent (CALCRIM No. 251) was error that "took the issue of intent away from the jury" and violated his right to due process. We disagree.

"[I]n determining the correctness of jury instructions, we consider the instructions as a whole. [Citation.]" (*People v. Friend* (2009) 47 Cal.4th 1, 49.) We also assume that jurors are intelligent people who are capable of understanding, correlating, and following all instructions. (*People v. Scott* (1988) 200 Cal.App.3d 1090, 1095.) We will find error only if it is reasonably likely the instructions as a whole caused the jury to misunderstand the applicable law. (*People v. Kelly* (1992) 1 Cal.4th 495, 525-527 (*Kelly*); see *Estelle v. McGuire* (1991) 502 U.S. 62, 74 (*McGuire*).) The arguments of counsel are relevant to this determination. (See *People v. Garceau* (1993) 6 Cal.4th 140, 189 (*Garceau*), disapproved on another point in *People v. Yeoman* (2003) 31 Cal.4th 93, 117-118.)

Here, the jury was instructed pursuant to CALCRIM No. 250 that the crimes charged required "proof of the union or joint operation of act and wrongful intent" and that "to find a person guilty of . . . disturbing the peace by loud or unreasonable noise, . . . that person must not only commit the prohibited act or fail to do the required act, but must do so with wrongful intent. [¶] A person acts with wrongful intent when he or she intentionally does the prohibited act. However, it is not required that he or she intend to break the law. The act required is explained in the instruction for the crime or

allegation." The jury was further instructed pursuant to CALCRIM No. 2689 that to prove defendant guilty of violating section 415, subdivision (2), "the People must prove that one, the defendant maliciously and willfully disturbed another person by causing a loud and unreasonable noise. Someone acts maliciously when he or she intentionally does a wrongful act or when he or she acts with a lawful [*sic*[6]] intent to annoy or injure someone else. Someone commits an act willfully when he or she does it willingly or on purpose. In order to disturb the peace of another person by causing a loud [and] unreasonable noise, there must be either, one, a clear and present danger of immediate violence; or, two, *the noise must be used for the purpose of disrupting the lawful activity rather than as a means of communication*." (Italics added.) The jury was also instructed pursuant to CALCRIM No. 200 to consider all of the instructions together.

Jurors were given four sets of written instructions to refer to in the jury room. Although the trial court had not instructed them pursuant to CALCRIM No. 251 (Union of Act and Intent: Specific Intent or Mental State), that instruction appears to have been included in the packet of written instructions. CALCRIM No. 251 told the jury that "[t]he crime of vandalism charged in this case require[s] proof of the union, or joint operation, of act and wrongful intent. [¶] For you to find a person guilty of the crime of vandalism, that person must not only intentionally commit the prohibited act, but must do so with a specific intent or mental state. That act and the specific intent or mental state required are explained in the instruction for that crime."

The instructions given here informed the jury of the specific intent requirement. Considering the instructions as a whole, it is not reasonably likely that the trial court's failure to read CALCRIM No. 251 to the jury (and/or the court's mistake in referring

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[6] The error appears in the reporter's transcript only. The written version of the instruction correctly stated that "[s]omeone acts maliciously when he or she intentionally does a wrongful act or when he or she acts with *the unlawful intent* to annoy or injure someone else." (Italics added.)

only to "vandalism" rather than to "vandalism and disturbing the peace by loud noise" in the written copy of CALCRIM No. 251) would have misled jurors into believing they could convict defendant *without* finding that he had the specific intent to disrupt lawful activity when he created loud noise at 3:00 a.m. CALCRIM No. 2689 expressly told them otherwise—that to find defendant guilty of the crime, they had to find that the noise was used "for the purpose of" disrupting lawful activity, rather than as a means of communication.

The arguments of counsel were consistent with the impression the jury would have gotten from the court's instructions. The district attorney said nothing to suggest that the crime required only general intent. "It's 3 o'clock in the morning," he began. "Does [defendant] go to the house, park, apologize, knock? No." "[H]e starts yelling and cursing, and screaming." He's "whirling around" doing donuts, "up and down the road, and he comes back up the driveway. Is he done yet? No. . . . He's yelling again. He's screaming at the kids' bedroom, 'Let me in.' He's cursing . . . ." "We have the lawful right to be asleep quietly at peace in [our] house[s]," the district attorney argued. "It is unreasonable to be screaming at the top of your lungs at 3 o'clock in the morning, trying to gain access to a house that is not yours, [that] you have reasonably been kicked out of."

Defendant's trial counsel highlighted the specific intent requirement. "If you find that [defendant's] yelling was for the purpose of communication," he argued, "not guilty." He claimed that "all of [defendant's] things" were inside the house, and he had "already been told" he could stay. Defendant had returned to the house after "a cooling down period," and he was "asking to come in." Reiterating the specific intent requirement, defendant's trial counsel argued that each individual juror had to have a "firmly held belief for the rest of [his or her] life that . . . [defendant] was out there disturbing the peace, *not as a means of communication, because that's a defense, but as a means to disrupt the lawful activity*, I guess inside." (Italics added.) "You have to have

an abiding conviction . . . that [defendant] *wasn't yelling for the purpose of communication.*" (Italics added.)

We do not think the instructions given here would have misled the jury into believing they could convict defendant without finding the requisite specific intent. The instructions were bolstered by the arguments of counsel, which left no doubt that the deciding factor on the section 415 count was whether defendant intended to communicate or, instead, to disrupt lawful activity under the guise of communication when he created the disturbance at 3:00 a.m. The trial court's failure to give CALCRIM No. 251 and/or its failure to include "disturbing the peace by loud noise" in the written copy of the instruction did not amount to error. (*Kelly*, *supra*, 1 Cal.4th at pp. 525-527; see *McGuire*, *supra*, 502 U.S. at p. 74.)

B. Exclusion of Evidence

Defendant claims the trial court prejudicially erred, in violation of his right to due process, in excluding "crucial" impeachment evidence—specifically, evidence that Roddy and Fink had shared a tent on a recent weekend camping trip with defendant and another person. The proffered testimony had "significant probative value and relevance," defendant argues, because the defense theory was that he was "not intoxicated" but instead "enraged about the possible relationship between Roddy and Fink, which apparently originated at the camping trip . . . ." We reject defendant's contentions.

"Only relevant evidence is admissible. [Citations.] Relevant evidence is defined in Evidence Code section 210 as evidence 'having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.'" (*Garceau*, *supra*, 6 Cal.4th at pp. 176-177.)

Evidence Code section 352 gives the court discretion to exclude evidence "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue

prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.) An appellate court will not disturb a trial court's exercise of discretion in admitting or excluding evidence "except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice [citation]." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

Here, the trial court did not abuse its discretion in excluding the proffered testimony as irrelevant, speculative, and unduly prejudicial. Defendant's trial counsel argued that he was "only going to ask two questions" and that Roddy's responses would go to "his credibility in terms of his denial of the relationship" and "his description of why he believed [defendant] was upset." The trial court properly rejected this argument. That Roddy may (or may not have) shared a tent with Fink on an overnight camping trip with two other individuals would not have established or even suggested he was lying when he disclaimed romantic involvement with Fink. Nor would it have discredited his testimony that defendant was upset because of "this whole love triangle, whatever" that was "Kevin's doing." Thus, the evidence had no impeachment value.

Nor was it relevant for any other purpose. Inviting the jury to speculate about what had occurred on the camping trip or why defendant was angry would have shed no light at all on the issues the jury had to decide: whether defendant drove under the influence of alcohol on October 12, 2010, disturbed the peace, committed vandalism, resisted arrest, and refused a chemical test. Since the proffered evidence was irrelevant, its probative value was plainly "substantially outweighed" by the probability that its admission would create a substantial danger of undue prejudice and would, as the trial court also found, necessitate undue consumption of time. (Evid. Code, § 352.) We agree with the trial court that the "two questions" defendant's trial counsel proposed to ask "could end up opening the door to a whole variety of questions from both sides, and back and forth."

Defendant next argues that the exclusion of the proffered testimony violated his constitutional right to present a defense. We disagree.

"As a general matter, the '[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant's right to present a defense.' [Citations.] Although completely excluding evidence of an accused's defense theoretically could rise to this level, excluding defense evidence on a minor or subsidiary point does not impair an accused's due process right to present a defense. [Citation.]" (*People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103.) "Although a criminal defendant is constitutionally entitled to present all relevant evidence of significant probative value in his favor, this does not mean the court must allow an unlimited inquiry into collateral matters; the proffered evidence must have more than slight relevancy. [Citations.]" (*People v. Marshall* (1996) 13 Cal.4th 799, 836.) Here, as we have already determined, the proffered testimony had no relevance. Its exclusion did not deny defendant due process, particularly where, as here, the record belies his assertion that "the trial court *completely* excluded evidence supporting the defense's theory." (Italics added.)

The jury was well-aware of the defense theory and of the evidence supporting it. Defendant's trial counsel declared in his opening statement that "[t]his isn't a case about drunk driving. This is a case about driving under the influence of anger." The jury then heard testimony that Kevin had a relationship with Fink, that he had become jealous when Roddy moved into Fink's house, that defendant believed Roddy and Fink were involved in a "love triangle," and that defendant was angry about it. There was testimony that the alleged relationship between Fink and Roddy was "a repeated issue" with defendant. There was also testimony that defendant had warned Roddy his tires would be slashed, his new truck ruined, and/or all his money taken from him.

Both counsel addressed the defense's "driving under the influence of anger" theory in their closing arguments. Defendant's trial counsel reiterated that defendant was not driving under the influence of alcohol but instead, "driving under the influence of

anger"—anger fueled by the alleged "love triangle." The district attorney argued that defendant "could have shut up." "This was not his argument," because "Fink was not his girlfriend." "Angry driving, it's not a defense. It's angry driving while he is intoxicated." "It is the intoxicated part that makes it a crime," the district attorney told the jury. Where, as here, the jury was plainly aware of the defense theory and the evidence supporting it, its failure to accept that theory does not mean defendant was denied due process. No constitutional error occurred here.

III. Disposition

The judgment is affirmed.

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Mihara, J.

WE CONCUR:

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Premo, Acting P. J.

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Elia, J.